

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

JAMES REMBERT, #293724,

Plaintiff,

v.

ELMORE COUNTY CORRECTIONAL
FACILITY OFFICERS,

Defendants.

CASE NO. 2:21-CV-13-RAH-KFP

RECOMMENDATION OF THE MAGISTRATE JUDGE

Plaintiff, an inmate at the Kilby Correctional Facility, recently filed this 42 U.S.C. § 1983 action with an application seeking leave to proceed in forma pauperis. Based on financial information provided by Plaintiff and pursuant to 28 U.S.C. § 1915(b)(1)(A), the Court determined Plaintiff owed an initial partial filing fee of \$4.33 and ordered him to pay the fee by February 18, 2021. Doc. 5 at 1–2. The Court warned Plaintiff failure to pay the initial partial filing fee would result in a recommendation that this case be dismissed and that dismissal would not be reconsidered absent exceptional circumstances. Doc. 5 at 3.

Plaintiff has not paid the initial partial filing fee ordered by the Court, which reflects a lack of interest in prosecuting this case. This case cannot proceed without Plaintiff's participation. Under these circumstances, the Court finds that lesser sanctions than dismissal are not appropriate. *See Abreu-Velez v. Bd. of Regents of Univ. Sys. of Ga.*, 248 F. App'x 116, 117–18 (11th Cir. 2007). Thus, this case is due to be dismissed. *See Moon v. Newsome*, 863 F.2d 835, 837 (11th Cir. 1989) (holding that, as a general rule, where a

litigant has been forewarned dismissal for failure to obey a court order is not an abuse of discretion.); *see also Link v. Wabash R.R. Co.*, 370 U.S. 626, 629–31 (1962) (acknowledging that the authority of courts to impose sanctions for failure to prosecute or obey an order is longstanding and empowers courts “to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.”); *Mingo v. Sugar Cane Growers Co-Op of Fla.*, 864 F.2d 101, 102 (11th Cir. 1989) (holding that a district court “possesses the inherent power to police its docket” and that “sanctions imposed [upon dilatory litigants] can range from a simple reprimand to an order dismissing the action with or without prejudice”).

Accordingly, it is the RECOMMENDATION of the Magistrate Judge that this case be dismissed without prejudice for Plaintiff’s failure to pay the initial partial filing fee in accordance with 28 U.S.C. § 1915(b)(1)(A) as ordered by the Court. It is further

ORDERED that on or before **March 29, 2021**, the parties may file objections to the Recommendation. The parties must specifically identify the factual findings and legal conclusions in the Recommendation to which objection is made. Frivolous, conclusive, or general objections will not be considered by the Court. The parties are advised that this Recommendation is not a final order and, therefore, is not appealable.

Failure to file written objections to the Magistrate Judge’s findings and recommendations in accordance with 28 U.S.C. § 636(b)(1) will bar a party from a de novo determination by the District Court of legal and factual issues covered in the Recommendation and waive the right of the party to challenge on appeal the District Court’s order based on unobjected-to factual and legal conclusions accepted or adopted by

the District Court except on grounds of plain error or manifest injustice. *Nettles v. Wainwright*, 677 F.2d 404 (5th Cir. 1982); 11TH CIR. R. 3-1. See *Stein v. Reynolds Sec., Inc.*, 667 F.2d 33 (11th Cir. 1982); see also *Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981) (en banc).

DONE this 15th day of March, 2021.

/s/ Kelly Fitzgerald Pate
KELLY FITZGERALD PATE
UNITED STATES MAGISTRATE JUDGE